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Letter dated 23 September 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report of Belgium submitted pursuant to resolution 1624 (2005) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 22 September 2006 from the Permanent Representative of Belgium to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I have the honour to transmit to you the attached report of Belgium to the Counter-Terrorism Committee submitted pursuant to Security Council resolution 1624 (2005) (see enclosure).

(*Signed*) Johan **Verbeke**
Ambassador
Permanent Representative of Belgium
to the United Nations

Enclosure

Implementation by Belgium of Security Council resolution 1624 (2005)

1.1 What measures does Belgium have in place to prohibit by law and to prevent incitement to commit a terrorist act or acts? What further steps, if any, are under consideration?

Article 4.1 of the European Union Framework Decision of 13 June 2002 stipulates that *"Each Member State shall take the necessary measures to ensure that inciting or aiding or abetting an offence referred to in Article 1(1), Articles 2 or 3 is made punishable"*.

The Belgian law of 19 December 2003 introduced into the Penal Code specific provisions concerning terrorist offences and participation in a terrorist group (articles 137 to 141 ter). The provisions of the Penal Code concerning joint commission of an offence (article 66) and aiding or abetting (article 67) are applicable to terrorist offences. The general terms of these provisions make it possible to prohibit and to prevent incitement to terrorism.

According to article 66 of the Penal Code:

> *"The following shall be punished as authors of a crime or an offence:*
>
> *Any person who committed the crime or offence or cooperated actively in its commission;*
>
> *Any person who by whatever action aided the commission of the crime or offence in such way that without his assistance the crime or offence could not have been committed;*
>
> *Any person who, by means of donations, promises, threats, abuses of authority or power, plots or deliberate deception, directly provoked the crime or offence;*
>
> *Any person who, either by views expressed in meetings or public places or by writings, printed matter, images or emblems of any kind displayed, distributed, sold or put on sale or public view, directly provoked others to commit the crime or offence, without prejudice to the penalties imposed by law on authors of provocations to commit crimes or offences, even if such provocations were not acted upon."*

According to article 67 of the Code:

> *"The following shall be punished as aiders or abetters of a crime or an offence:*
>
> *Any person who gave instructions for committing it;*
>
> *Any person who provided weapons, instruments or any other means used in the crime or offence, knowing that they would be used for that purpose;*
>
> *Any person who, except in the case provided for in article 66(3), knowingly aided or assisted the author or authors of the crime or offence in the acts by which it was prepared or facilitated or those by which it was carried out."*

Moreover, article 1 of the law of 25 March 1891 on the suppression of provocation to commit crimes or offences makes it possible to prosecute incitement

to commit terrorism or to prevent such incitement, independently of whether the person accused of such incitement participated in a terrorist offence as such or whether such an offence actually took place. The article provides as follows:

"Any person who, either by views expressed in meetings or public places or by writings, printed matter, images or emblems of any kind displayed, distributed, sold or put on sale or public view, directly and maliciously provoked others to commit acts that the law defines as crimes, without such provocation being acted upon, shall be subject to between eight days' and three years' imprisonment and a fine of 50 to 3,000 euros".

Lastly, on 19 January 2006, Belgium signed the Council of Europe Convention on the Prevention of Terrorism. Work is currently under way to enable Belgium to ratify the Convention as soon as possible, in order to supplement Belgian penal law provisions in this area.

1.2 **What measures does Belgium take to deny safe haven to any persons with respect to whom there is credible and relevant information giving serious reasons for considering that they have been guilty of incitement to a terrorism act or acts?**

Various kinds of measures or plans can be mentioned in this regard:

• Denial of the right of asylum

Belgium is a party to the Geneva Convention of 1951 relating to the Status of Refugees, article 1 (F) of which provides that:

"The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations."

The Commissioner-General's Office for Refugees and Stateless Persons, which is in charge of considering the merits of asylum applications, verifies whether or not the clause denying refuge is applicable. That clause has already been used in cases involving war crimes and crimes against humanity and can also be invoked, if necessary, in cases of proven incitement to terrorism, which is covered by subparagraph (c) above.

• Reform of extradition laws

In the area of legislation, Belgium has taken steps to amend its extradition laws (laws of 1833 and 1874). Parliament is currently reviewing a bill which would introduce a new exception to domestic legislation, currently providing that "Belgium shall not extradite a person who is being prosecuted for political purposes or for an act relating to a political offence". Under the terms of this amendment, the exception is invoked when extradition is requested in respect of an offence such as contained in an international instrument on terrorism, which explicitly prohibits the

refusal of extradition based on the political nature of the violation, without the possibility of reservation.

• Anti-radicalism plan (*"Plan Radicalisme"*)

In April 2006 the Belgian authorities also adopted an anti-radicalism plan which aims to combat radicalism in all its forms, on a global and integrated basis.

This anti-radicalism plan, which is designed to complete the existing counter-terrorism mechanisms, has the following goals:

– To develop integrated actions among the various participating departments;

– To help protect democratic values and combat the polarization of society, notably through measures to combat incitement to hatred and the dissemination of fundamentalist, racist and extremist ideas.

The plan has seven lines of action, each of which corresponds to a channel through which incitement to commit radical acts — or extremist and terrorist acts — may potentially occur (e.g. the Internet).

The plan provides for a series of preventive and enforcement measures.

• Proactive investigations

Wherever there are reasonable grounds to suspect that serious offences (including those relating to terrorism) will be or have been committed but are not yet confirmed, article 28 bis, paragraph 2, of the Code of Criminal Investigation authorizes the police, pursuant to a written and prior decision of a public prosecutor, to investigate, gather, record and process data or information. Proactive investigations are designed to achieve an exclusively judiciary goal, namely, the prosecution of offenders.

The advantage of proactive investigations is that they allow for early intervention — based on reasonable suspicion, without their necessarily being an existing link to an actual crime or a suspected person, and under the direct control of a public prosecutor — in cases relating to the fight against serious crimes.

In terrorism-related matters, proactive investigations, both domestic and international, are authorized and carried out under the direction of the Federal Prosecutor (who requests mutual legal assistance within the framework of an international investigation).

They are also a priority in terms of Government criminal policy.

1.3 **How does Belgium cooperate with other States in strengthening the security of its international borders with a view to preventing those guilty of incitement to commit a terrorist act or acts from entering their territory, including by combating fraudulent travel documents and, to the extent attainable, by enhancing terrorist screening and passenger security procedures?**

Belgium is a member of the Schengen area and thus participates in the Schengen Information System (SIS), which is a system that allows the competent authorities of member States to cooperate by exchanging information with a view to exercising control over persons and objects. All alerts are issued at the request of the competent judicial or administrative authority.

Over recent years, several amendments have been made with a view to improving the operation of SIS as a useful counter-terrorism instrument, with new functions being introduced into the system.

With regard to measures aimed at combating fraudulent travel documents, a European Union Regulation of 25 May 1995 imposed a uniform visa for the countries belonging to the system. The regulation provides for procedures and specifications designed to prevent the creation and use of false or falsified visa.

When an application is made for a short-stay visa, the provisions of the Convention implementing the Schengen Agreement provide for the application of a double security criterion, which includes national security. In accordance with article 5, paragraph 1, and article 17, paragraph 2, of the Agreement, Belgium consults the files of those refused entry via SIS, as well as, where appropriate, the central authorities of member States.

Belgium is also one of the two pilot States for the "BIODEV" project, which aims to establish a biometric database of visa applicants. This project will soon be extended to eight countries under the title "BIODEV II".

At the end of 2004, Belgium also introduced a model biometric passport offering a very high degree of protection against forgery.

On the practical level, border control is carried out by the competent police departments, which on a daily basis examine the passenger lists of flights regarded as potentially risky in terms of a terrorist threat. On the basis of this examination, controls are carried out as necessary by the airport police.

All information concerning forged or falsified documents is transmitted to the counter-terrorism unit of the federal police, which analyses the data gathered at each border post. In this context, the central "terrorism and sects" unit collaborates effectively with the maritime, airport, rail and road police. Each of these departments has a terrorism focal point.

Lastly, it should be noted that the federal police has notably developed various forms of bilateral cooperation with third countries concerning the exchange of information and training, especially regarding the detection of fraudulent documents.

1.4 **What international efforts is Belgium participating in or considering participating in/initiating in order to enhance dialogue and broaden understanding among civilizations in an effort to prevent the indiscriminate targeting of different religions and cultures?**

The federal Government and the federated entities[1] play an active part in efforts and initiatives undertaken within European and international forums to foster intercultural and interreligious dialogue and to combat discrimination and encourage tolerance.

Within the European Union, Belgium has participated actively in drawing up and implementing the European Union's action plan and strategy on combating radicalization and recruitment, at both the national and international levels.

[1] Since Belgium is a federal State, competence for educational and cultural matters, including in the area of international cooperation, lies with the communities (i.e., the Flemish, French and German-speaking communities).

Belgium also plays an active part in the Euro-Mediterranean Partnership (Euromed), which includes among its objectives bringing people together through social, cultural and human partnerships intended to foster cultural understanding and civil society exchanges between its member countries. In this context, the federal Government and the French and Flemish-speaking communities of Belgium actively support the Anna Lindh Euro-Mediterranean Foundation for the Dialogue between Cultures, in financial and other ways.

Within the United Nations, Belgium lends considerable support to the Global Agenda for Dialogue among Civilizations sponsored by the Secretary-General. The degree of its involvement is evident from the size of its financial contribution (at 250,000 euros, Belgium makes the third largest contribution to this initiative) and also from its contribution to the Agenda itself, in the debate conducted by the Panel of the Wise.

While holding the Presidency of the Organization for Security and Cooperation in Europe (OSCE), the Belgian Minister for Foreign Affairs has taken a number of initiatives to promote tolerance and mutual respect within OSCE. It recently transmitted to the Secretary-General of the United Nations the contribution of OSCE to the Agenda Process.

As part of its engagement, Belgium places special emphasis on the problem of "hate speech" disseminated internationally through satellite television channels and the Internet. Belgium helped to organize a conference held in Brussels on 29 May 2006 which brought together experts in the field to discuss the role of the Internet and satellite television in relations among the peoples of OSCE member States and countries of the Mediterranean and the Middle East. The outcome of this conference may contribute to the debate launched through the Global Agenda.

At the United Nations Educational, Scientific and Cultural Organization (UNESCO), the French and Flemish-speaking communities are supporting initiatives to foster intercultural dialogue and promote diversity. The French-speaking community also played a significant role in drafting the two most recent normative instruments adopted by UNESCO: the Convention for the Safeguarding of the Intangible Cultural Heritage and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, both of which contribute to better understanding among peoples. Within UNESCO, the Flemish community of Belgium is calling for the development of an intercultural dialogue and its inclusion in the Organization's medium-term strategy.

At the Council of Europe, the French and Flemish-speaking communities attach great importance to the Council's activities relating to intercultural dialogue. The White Book now being drawn up under its auspices will contribute to the European Year for Intercultural Dialogue in 2008.

1.5 **What steps is Belgium taking to counter incitement of terrorist acts motivated by extremism and intolerance and to prevent subversion of educational, cultural and religious institutions by terrorists and their supporters?**

As we have explained above, Belgian law allows for the prosecution of acts of incitement to terrorism.

Furthermore, acts of incitement to hatred, racism and discrimination are covered by the law of 30 July 1981 on the suppression of certain acts inspired by racism or xenophobia.

As explained above, measures for the prevention and suppression of these acts are part of the anti-radicalism plan adopted by the Government of Belgium.

This plan is based on a global, integrated approach to the phenomenon of radicalism and calls for cooperation among the various public agencies and authorities in as preventive a manner as possible.

Under this plan, the leaders of the various ethnic, cultural and religious communities are urged to promote the values of mutual respect and to condemn intolerant behaviour.

In addition, in the framework of the 10-point federal plan to combat racism, a number of initiatives have been introduced to combat "cyber hatred" by setting up an association which brings together key actors such as the Federal Computer Crime Unit (FCCU) of the federal police, the Internet Service Providers Association (ISPA), the College of Public Prosecutors and the Centre for Equal Opportunities and Combating Racism. This combination of skills and fields of activity is intended to develop an effective modus operandi to deal with the problem of expressions of hatred on the Internet.

A vast number of initiatives have been taken at the local, community and regional levels to promote tolerance and mutual respect and to encourage interreligious and intercultural dialogue, especially in schools.

Programmes have been adopted in the Flemish community for the compulsory integration of certain target groups, especially ministers of religion. There are also various initiatives for promoting integration, such as the "Trefmedia", which aims to foster diversity in the media.

In higher education, the Catholic University of Louvain has introduced a course for imams in Belgium, starting with the academic year 2006-2007. The aim is to bring out and draw attention to the democratic aspects of the religious teaching of Islam and to prevent subversion by extremists.

Lastly, at the national level, the King Baudouin Foundation has introduced a discussion forum on Islam, in order to improve knowledge of Islam and encourage a diversity of views and opinions about Islam and Muslims.

1.6 **What is Belgium doing to ensure that any measures taken to implement paragraphs 1, 2 and 3 of resolution 1624 (2005) comply with all of its obligations under international law, in particular international human rights law, refugee law and humanitarian law?**

As a party to the universal instruments on human rights protection, humanitarian law and refugee law and to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Belgium attaches great importance to the observance and promotion of human rights, humanitarian law and the right to asylum.

Belgium follows the guidelines of the Committee of Ministers of the Council of Europe on human rights and the fight against terrorism.

With regard to measures taken by Belgium to implement paragraph 1 of resolution 1624 (2005), it should be noted that the law of 19 December 2003, which incorporates terrorist offences into the Penal Code, expressly stipulates that its provisions may not be interpreted as being aimed at curbing or restricting fundamental rights or freedoms as enshrined, in particular, in articles 8 to 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In general, a number of different mechanisms ensure that any steps taken in the context of the fight against terrorism conform to the applicable international law.

Thus, each new law or measure is subject to the following procedure:

1. The law or measure is first studied by the competent administrative authorities, through their own legal offices;

2. It may, where applicable, be submitted to a competent advisory body for its opinion, as an example, the Commission on the Protection of Private Life, established by the law of 8 December 1992, plays an important role in fostering respect for human rights in the private sphere;

3. The law or measure is also confirmed by the Council of State, which must render an opinion on any regulation before its adoption in the form of either a royal decree or an act;

4. It may, if the measure under consideration requires the adoption or revision of a law, be reviewed by the competent parliamentary commission and then by the Parliamentary Assembly.

Measures may be subject to Belgian administrative review or judicial remedy and, where appropriate, be contested before the Human Rights Committee or the European Court of Human Rights.